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In The

Supreme Court of the United States

October Term, 1991

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,

Petitioners,

vs.

DOROTHY REED, *et al.*,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Illinois

REPLY BRIEF FOR THE PETITIONERS

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INTRODUCTORY STATEMENT

This brief is submitted by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski (collectively the "Board"), as petitioners in No. 90-1435, in reply to the brief of Dorothy Reed, et al., as respondents in No. 90-1126. While the Reed brief is labeled as No. 90-1126, the issues raised are identical to those in No. 90-1435. Thus, the Board respectfully submits this reply to the Reed respondents' brief.

ARGUMENT

I. THE CONTROVERSY IS NOT MOOT

The respondents suggests that there is no longer a need for the Court to adjudicate petitioners' ballot access rights since the election has been held. Under Illinois law, however, the right of the Harold Washington Party to future ballot access hinges on the propriety of placing the HWP candidates on the November, 1990 ballot. Several HWP candidates received over 5% of the vote, entitling the entire party to hold a primary election and to an automatic party line on future Cook County general election ballots. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd Supp. 1991).

The decision of the Illinois Supreme Court and this Court's stay order of October 25, 1990 have cast great uncertainty on the manner by which new political party candidates in Illinois may obtain ballot access.[1] The controversies in this case will recur whenever new political party candidates run in Illinois, or four times every two years. The controversies will first repeat in December, 1991, when petitions for county offices are filed in Cook

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[1] The Illinois Supreme Court's unexplained decision, together with this Court's stay order, indeed has clouded the already-opaque statutory scheme to the extent that even the state agency which administers elections cannot tell candidates running in 1992 exactly what do to qualify for the ballot. The Illinois State Board of Elections' *1992 Candidate's Guide* has a new caveat in its section setting forth the requirements for new party candidates for county office. The *Guide* admonishes candidates to "[s]ee *Reed v. Norman*, writ of certiorari granted May, 1991, pending in the United States Supreme Court." Illinois State Board of Elections *1992 Candidate's Guide* at 29.

County.[2] While new party candidates for county offices are relatively rare in Illinois, new parties are customarily used by candidates for municipal office in Illinois. These municipal candidates have obediently followed the "complete slate" requirement, but would not have to follow such a restraint if this Court were to declare it void. Because these issues will recur, but evade review, this case presents a recognized exception to the mootness doctrine which this Court has often invoked in election cases. *Moore v. Ogilvie*, 394 U.S. 814, 816, 89 S.Ct. 1493, 23 L.Ed.2d 1 (1969).

II. THE DECISION BELOW INVOLVED SUBSTANTIAL FEDERAL QUESTIONS

Respondents argue that the judgment of the Illinois Supreme Court merely involved construction and application of a state statute, and thus rested on independent state grounds. However, that statutory interpretation and application are directly at odds with the federally-protected rights of the HWP candidates and their supporters. The HWP directly attacked the validity of these statutes on federal constitutional grounds in the courts below, and the Electoral Board's decision rested in large part on its

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[2] Candidates running in the March, 1992 Harold Washington Party primary need only submit 956, rather than 25,000, signatures on their nominating petitions. Official Canvass of Results of the November, 1990 General Election, Cook County Canvassing Board; Ill.Ann.Stat. ch. 46, ¶ 7-10 (Smith-Hurd 1991 Supp.).

desire to narrowly construe the statutes to avoid infringing on those federal rights. See Petition in No. 90-1435 at 40a, 48a.

The first of two issues cited by respondents is the "party name" issue. Indeed, the statute in question helps prevent voter confusion, by ensuring that persons do not run under a label which is already used by a party which has become established *in the same jurisdiction*. However, the Illinois Supreme Court took that purpose a step too far, by preventing a group of persons from expanding the party from Chicago to Cook County under the same name, even though that group had permission to use the name, and the "two" parties would never be on the ballot at the same time.[3]

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[3] Candidates for county offices run only in even-numbered years; candidates for Chicago municipal offices run in the odd-numbered years. *Compare* Ill.Ann.Stat. ch. 46 ¶¶ 2A-10 – 2A-24 (county offices) and ¶¶ 2A-25 – A-26 (Chicago municipal offices) (Smith-Hurd 1991 Supp.).

Also, a party which becomes established in Cook County is not entitled to run candidates in Chicago municipal elections against candidates of Chicago-established parties. (See Resp. Bf. at 3. "each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials.") The party only becomes established in the political subdivision in which it ran: Cook County. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Establishment of the party in Cook County does not also permit the party to run in municipal elections in municipalities in that county. At any rate, the City of Chicago is located in two different counties: Cook and DuPage.

Success in a countywide election entitling a party to established party status in that county does not, under Illinois law,

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Respondents argue that petitioners' requested relief would enable anyone to start their own "Republican" or "Democratic" party and run candidates under that name against the "legitimate" candidates of those parties. Respondents' supposition ignores that these parties are established statewide *and* in every jurisdiction and political division of the State.[4] Those two names, therefore, cannot be used by any new political party running anywhere in the State. The Harold Washington Party's established status in two jurisdictions prevents others from using the HWP name in those jurisdictions. The decision of the Illinois Supreme Court prohibits the HWP from expanding its base throughout the state so it, too, might achieve the status of the Republican or Democratic parties.

III. THE COUNTYWIDE AND CITY-ONLY CANDIDATES WERE IMPROPERLY REMOVED FROM THE BALLOT BECAUSE THEIR RUNNING-MATES FAILED TO FILE THE REQUISITE NUMBER OF SIGNATURES.

The Board agrees with the Reed respondents that the HWP candidates for Cook County Commissioners running outside Chicago (the "suburban candidates") were

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permit the party to run in *municipal* elections in that county. Thus, the "Timothy Evans-Chicago" Harold Washington Party and the "Eugene Pincham-Cook County" Harold Washington Party cannot be on the ballot at the same time.

[4] Both parties retained this special status by receiving over 5% of the vote at the November, 1990 election for statewide candidates. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.).

properly denied ballot access. The respondents, however, mischaracterize why the other HWP candidates were removed from the ballot. They were not removed because they did not have sufficient signatures. They were removed because the suburban candidates did not have enough signatures: in short, because of the "complete slate" requirement.

The U.S. District Court's decision in the companion case sheds little light on the issues at stake before this Court. *Black v. Cook County Officers Electoral Board*, 750 F.Supp. 901 (N.D. Ill. 1990). The *Black* court considered only the HWP's claim that Illinois' requirements that the HWP slate must include judicial candidates was impermissible. Interpreting the Illinois statutory scheme under the *Erie* doctrine, the District Court found that Illinois law did not, in fact, require judicial candidates to be part of the "complete slate". *Id.* 750 F.Supp. at 908. In doing so, the District Court declined to rely on the Circuit Court of Cook County's interpretation of the statute, which found that judicial candidates were a required part of the slate. Further, the *Black* court did not have the opportunity to decide whether the "complete slate" or "party name" requirements, as later interpreted by the Illinois Supreme Court, were themselves unconstitutional.

CONCLUSION

The judgment of the Supreme Court of Illinois should be affirmed in part and reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

Respectfully submitted,

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